



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 19, 1994

Ms. Helen M. Gros
Senior Assistant City Attorney
City of Houston Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR94-454

Dear Ms. Gros:

Your predecessor asked whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. The request was assigned ID# 21220.

The City of Houston (the "city") has received an open records request for information that relates to a settled lawsuit involving illegal asbestos removal. The city has made most of the file available to the requestor, except for certain portions which it has submitted to this office for review. The city claims that the submitted information is protected from disclosure under sections 552.107 and 552.111 of the act.¹

We first address your predecessor's assertion that section 552.107 of the Government Code excepts the information from required public disclosure. Section 552.107(1) excepts information if:

(1) it is information that . . . an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Rules of the State Bar of Texas.

¹The city claims that the submitted information is protected from disclosure as attorney work product under sections 552.107 and 552.111 of the Government Code. We note, however, that this office considers attorney work product to be a part of section 552.103, the litigation exception. *See* Open Records Decision No. 574 (1990). Your predecessor did not explain that litigation is currently pending or anticipated in this matter. *See id.* Furthermore, we understand that the litigation to which this information relates has concluded. Therefore, we do not address the application of section 552.103 in this ruling.

Section 552.107(1) protects information that reveals client confidences to an attorney, including facts and requests for legal advice, or that reveals the attorney's legal advice. See Open Records Decision No. 574 (1990).

We have examined the information for which the city seeks section 552.107(1) protection. We conclude that some of the submitted information reveals client confidences and requests for legal advice, as well as an attorney's legal advice or opinion. We have marked the information that the city may withhold under section 552.107(1) of the Government Code.

The city also claims that section 552.111 of the Government Code excepts the information from required public disclosure. Section 552.111 excepts an "interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined section 552.111 and held that it excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body at issue. This office also held, however, that section 552.111 does not except purely factual information. *Id.* at 5-6.

We have examined the information submitted to us for review. Much of the information for which the city seeks protection from disclosure under section 552.111 has been marked as protected under section 552.107 as explained above. We note, however, that the remaining information not protected by section 552.107 is either factual in nature or not related to the city's policymaking processes. Therefore, the city may withhold only the marked information from required public disclosure.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, reading "Loretta DeHay".

Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/JCH/SLG/rho

Ref.: ID# 21220

Enclosures: Marked documents

cc: Ms. Kathryn Kersh
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(w/o enclosures)